IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.441 of 2017
and
C.M.P. No.10797 of 2017

Vasanthi Mary ... Appellant

Vs.

1. S. Pushparaj (died)
2. Amalorpava Mary
3. Mangala Mary
4. Elizabeth
5. Anthoni Raj
6. Shanthi ... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 19.01.2017 passed in A.S. No.23 of 2014, on the file of the IV Additional District Court, Coimbatore, reversing the decree and judgment dated 10.02.2012 passed in O.S.No.444 of 2008, on the file of the II Additional Subordinate Court, Coimbatore.

For Appellant	:	Mr.N. Manokaran
For R2, R4 to R6	:	Mr.J. Titus Enock

JUDGMENT

The plaintiff in O.S. No.444/2008 on the file of the II Additional Subordinate Court, Coimbatore, is the appellant herein. She filed the suit for recovery of a sum of Rs.1,48,880/- from the defendant together with interest at the rate of 24% per annum from the date of plaint till the date of realisation and for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

3.1. The defendant borrowed a sum of Rs.1,20,000/- from the plaintiff on 20.04.2006 to meet his urgent family expenses and executed a promissory note (Ex.A1) promising to repay the principal together with interest at the rate of 12% per annum on demand by the plaintiff or to her order.

3.2. Though the plaintiff requested the defendant to pay the amount due under the promissory note, the defendant started evading and also sent a legal notice dated 08.07.2008 (Ex.A2) to the plaintiff containing false allegations. Therefore, the plaintiff issued a legal notice dated 23.07.2008 (Ex.A3) to the defendant demanding him to pay the amount due under the promissory note (Ex.A1). The said notice was received by the defendant and his counsel, as is evidenced by the postal acknowledgment cards (Ex.A4 and Ex.A5). However, the defendant did not come forward to make good the payment. Hence the suit.

4. The suit was resisted by the defendant on the following grounds:

i. The defendant borrowed a sum of Rs.10,000/- on 20.02.2003 and executed a registered mortgage deed (Ex.B1) on the same day.

ii. The plaintiff got the signature of the defendant on a blank promissory note.

iii. The suit has been filed by the plaintiff by misusing the said promissory note.

5. On the basis of the above pleadings, the trial Court framed the following issues :

"(1). Whether the defendant has handed over the promissory note as unfilled but signed as security for mortgage?

(2) Whether the plaintiff is entitled to the recovery of the suit amount with interest and the costs of the suit as prayed for?

(3) To what other relief is the plaintiff entitled?

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A5. The defendant examined himself and one another witness and marked Ex.B1 to Ex.B3.

7. The learned trial court judge after analysing the oral and documentary evidence on record, decreed the suit in favour of the

plaintiff vide his decree and judgment dated 10.02.2012, on the following grounds:-

i. The plaintiff has proved the due execution of the promissory note by adducing acceptable oral and documentary evidence.

ii. The defendant did not deny his signature on the promissory note (Ex.A1). Therefore, there is a presumption under Section 118 of the Negotiable Instruments Act, unless the contrary is proved.

iii. The defendant had not rebutted the presumption under Section 118 of the Negotiable Instruments Act by adducing acceptable evidence.

iv. Even assuming that the plaintiff had subsequently filled up the promissory note, Section 20 of the Negotiable Instruments Act comes into operation.

v. In the legal notice dated 08.07.2008 (Ex.A2), the defendant had stated that he handed over 4 signed blank promissory notes and 4 signed blank papers on the date of execution of the mortgage deed Ex.B1. However, in the written statement, the defendant had averred that he handed over only one signed blank promissory note on the date of the mortgage deed.

8. Aggrieved over the decree and judgment passed by the trial court judge, the defendant filed an appeal in A.S. No.23 of 2014, before the IV Additional District Court, Coimbatore. The learned IV Additional District Judge, after analysing the oral and documentary evidence adduced on both sides, vide her decree and judgment dated 19.01.2017, set aside the decree and judgment passed by the trial court on the following grounds:

i. The plaintiff has not proved her wherewithal to lend a sum of Rs.1,20,000/-.
ii. The plaintiff did not cross examine Antony Raj (D.W.2), one of the attestors, on each and every point averred in the plaint.
iii. The plaintiff has taken a different stand with regard to the purpose for which the money was lent to the defendant.

9. Aggrieved over the decree and judgment passed by the first appellate court, the present appeal is filed by the plaintiff. During the

pendency of the second appeal, the first respondent/defendant died and his legal heirs were brought on record as respondents 2 to 6.

10. At the time of admission the following substantial question of law was framed by this Court:

> *" Whether the first appellate court was right in dismissing the case of the plaintiff without considering the scope of Section 118 of the Negotiable Instruments Act, even though the first defendant admitted his signature on the promissory note?"*

11. Heard Mr. N. Manokaran, learned counsel for the appellant and Mr.J. Titus Enock, learned counsel appearing for the respondents 2 and 4 to 6.

12. At the outset it may be observed that the defendant did not deny his signature on the promissory note dated 20.04.2006 (Ex.A1). Once the signature is admitted there is a presumption under Section 118 of the Negotiable Instruments Act unless the contrary is proved by the

defendant. In the instant case, the defendant did not adduce any acceptable evidence to rebut the presumption under Section 118 of the Negotiable Instruments Act. His specific contention was that he borrowed a sum of Rs.10,000/- during the year 2003 and executed a registered mortgage deed (E.B1) in favour of the plaintiff. It is also his contention that on the date of mortgage deed (Ex.B1), he handed over a signed blank promissory note to the plaintiff. However, in the legal notice dated 08.07.2008 (Ex.A2), he had stated that he handed over four signed blank papers and four signed blank promissory notes to the plaintiff. The trial court had properly analysed the evidence on record and decreed the suit. On the other hand the first appellate court had dismissed the suit filed by the plaintiff mainly on the ground that the plaintiff has not proved her wherewithal to lend a sum of Rs.1,20,000/-. It is pertinent to point out that there is absolutely no pleading in the written statement questioning the financial capacity of the plaintiff.

12.1. The first appellate court had also observed that the plaintiff had not cross examined Antony Raj (D.W.2), one of the attestors of promissory note on each and every aspect of her case. It is relevant to point out that Antony Raj is the son of the defendant and he has not attested either the mortgage deed (Ex.B1) or the promissory note (Ex.A1). Even as per the averments in the written statement of the defendant, the witnesses to the mortgage deed (Ex.B1) are Kulandaiswamy, Madhava, Rathnaswamy and Antonysamy.

12.2. In the plaint it is categorically stated that the defendant borrowed a sum of Rs.1,20,000/- to meet his urgent family expenses. The plaintiff, during the course of cross examination had deposed that she lent a sum of Rs.1,20,000/- to the defendant for agricultural purpose whereas in the reply notice the reason was stated as "medical expenses". However, this would not in any way affect the case of the plaintiff because in the plaint she had specifically stated that she lent money to the defendant to meet his urgent family expenses. The first appellate court had harped on several unnecessary facts and had dismissed the suit filed by the plaintiff. The observations made by the first appellate court are totally perverse. On the other hand, the trial court had rightly decreed the suit filed by the plaintiff. Even assuming that the defendant handed over a signed blank promissory note, Section 20 of the Negotiable Instruments Act, comes into operation, which reads thus:

> ***Section 20 in The Negotiable Instruments Act, 1881***
>
> *20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.*

Therefore, the substantial question of law is answered in favour of the appellant.

13. In the result,

i. the Second Appeal is allowed. No costs. Consequently connected Civil Miscellaneous Petition is closed.

ii. The decree and judgment dated 19.01.2017 passed in A.S. No.23 of 2014, on the file of the IV Additional District Court, Coimbatore, is set aside.

iii. The decree and judgment dated 10.02.2012 passed in O.S.No.444 of 2008, on the file of the II Additional Subordinate Court, Coimbatore, is upheld.

28.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The IV Additional District Judge, Coimbatore.
2. The II Additional Subordinate Judge, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras.

R. HEMALATHA, J.

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